

tion of law; his duties were occasional and temporary, prescribed by his superior, the President of the United States. As was said by Chief Justice MARSHALL in *Little et al. v. Barrieme et al.*, the instructions to Mr. Blount cannot change the nature of the transaction or legalize any act which, without those instructions, would have been a plain trespass. Mr. Blount acted at his peril. As well might Strafford have pleaded the King's writ as Mr. Blount might plead the President's commission. Neither Charles Stuart nor Grover Cleveland can be above the law.

From the language of the Constitution of the United States, from the language of the Acts of Congress, from the language of the Supreme Court, from precedents, from the nature of American institutions, it can only be concluded that the President of the United States has no power to appoint a paramount diplomatic agent except by and with the advice and consent of the Senate.

THE TESTIMONY TAKEN BEFORE A CORONER CONSIDERED AS EVIDENCE.

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The decision of the coroner, excluding Col. Ainsworth and his counsel from the deliberations of the jury, impanelled to inquire into the causes of the late disaster at Ford's Theatre, has been the occasion of comment and discussion, not only within legal circles, but also among those who have viewed the situation from the standpoint of a layman. With all due deference to the magistrate who has made this ruling, we beg leave to enter our respectful protest against his decision, and in so doing, may unintentionally, though not unwillingly, accede a greater importance to the coroner's office than the Washington official has ever claimed. Upon a thorough investigation of the subject of the coroner's office, we have concluded:

1st. *That a coroner holding an inquisition super visum corporis is a court of record.*

2d. *His inquest is in the nature of a proceeding in rem, and is prima facie evidence of all facts found therein, and in a civil case throws the burden of proof on the party alleging the contrary.*

3d. *All depositions or testimony taken before the coroner's inquisition, whether reduced to writing or not—is evidence for or against any one who may be thereby affected.*

I. THE CORONER'S COURT IS A COURT OF RECORD.

We are impressed with the importance of this office whenever it is mentioned by the old common law writers. Coke (Institutes 81) calls him the *vita reipublicæ pax*. The same authority (2 Institutes and 4 Institutes) informs us that: "He was so called because he hath to do principally with the pleas of the crown, or such wherein the king is more immediately concerned." "In this light the Lord Chief Justice of the King's Bench is the principal coroner of the kingdom."

"He (the coroner) must have a sufficient landed estate to uphold the dignity of the position:" The "Mirror" Chap. 1, Sec. 2. Under the old common law he (the coroner) could hold pleas of the crown:" The "Mirror" Chap. 1, Sec. 3.

The right to hold pleas of the crown was taken from the coroner by the *Magna Charta*, but was restored by the statute *de officio coronatis* IV, Edward I. Among other things the statute directs: "If any man be slain, and the culpable man be found, he shall be amerced, all his goods and corn within his grange, and if a freeman, his land shall be valued and this escheat to the crown. Coroners shall take the testimony of the witnesses in writing. If any coroner may find any nuisance by which the death of a man happened, that the township shall be amerced on such finding." Statute III, Henry VII directs: "That after the felony found the coroner shall deliver therein inquisitions afore the justices of the next gaol delivery in the shire where the inquisition is taken, . . . and if any coroner do not in such manner certify his inquisition, he shall be fined one hundred shillings."

Statute II and III, Phillip and Mary, Secs. 4 and 5: "Every coroner upon inquisition before him found where any person or persons shall be indicted for murder or manslaughter committed, shall put in writing the effect of the evidence given by the jury before him, being material," etc., "and return the same to the Justices of Eyre."

Coke tells us that the substance of all the foregoing statutes is to be found in the "Mirror," which was written before the Conquest of England by the Normans, but was edited and enlarged by a most discreet man by the name of Horne in the reign of Edward I; Preface to Coke's Reports, 9th and 10th Vol.

Viner's "Abridgment of the Common Law," informs us that the substance of all these statutes are to be found in the common law writers, and was the common law in the time of Glanville, Fleta Britton and Bracton. Hawkins Pleas of the Crown, and Bacon's Abridgment state that the statute *de officio coronatis* is wholly directory and in affirmation of the common law, that the coroner is not excused from any of his duties, under the common law, which were incident to his office before the enactment of that statute: 2 Hawkins, P. C., Chap. 9, Sec. 28; Bacon's Abridgment-Coroner.

"The offices of the coroner," says Hale, "are judicial and ministerial; and his office did not determine with the death of the king. He could hold no inquest save in death. Under the common law, he should take down the evidence of the witnesses in writing, and return the same and the finding of the jury to the Court of Eyre or Nisi Prius." Hale's Pleas of the Crown.

The Secretary of Edward VI and Elizabeth, Sir Thomas Smith, in his history of the commonwealth tell us that: "The impannelling of this inquest (the coroner's) and the view of the body is commonly in the streets, in an open place and in *coroni populi*."

His duties are described by COKE: "A coroner may and ought to inquire of all the circumstances of the party's death, and also of all things which occasioned it; and, therefore, it is said, if it be found by his inquest that the person deceased, was

killed by a fall from a bridge into a river, and that the bridge was out of repair by the default of the inhabitants of such town, and those inhabitants are bound to repair it, the township shall be amerced:" Coke's Lyttleton, 277-83.

It was also his duty to admit the evidence on both sides. Thus, we read: "The coroner must admit the evidence on both sides of the question, and if not admitted the inquest will be quashed:" 1 Leving 180. "Coroners ought to hear evidence and counsel on both sides:" 2 Siderfin Reports 90-91. "In the court of King's Bench a rule was granted for a coroner to show cause why a criminal information should not be filed against him for refusing on taking an inquisition *super visum corporis* to receive evidence on the part of the party accused:" 1 Leach Crown Cases 43. "An inquest of office by the coroner or escheator is public and every one has a right to be heard; and it is conclusive against the world:" Starkie on Evidence.

"Inquest of office is of such notoriety that the law presumes every one to be present; it is an inquest of office and is open to every one and is against the world.

Statutes 34, Edward III, C. 13, 36 Edward III, C. 13, 1 Henry VIII, C. 8, 2 and 3, Edward VI, C. 8, 3 Term Reports, 707-12-21. See also Lord Kenyon's Opinion. Phillip on Evidence citing: 3 Kible, 489; 6 Best and Cress, 611-27; 2 Burrows, 43; 1 Saunders, 362; 9 Dowling and Ryland, 247. Also Boisliniere v. County Commissioners, 32 Mo. 375.

"Again, the coroner's inquest is a court of record of which the coroner is judge:" 6 Best and Cress, 611-25.

II. THE CORONER'S INQUEST IS AN ACTION IN REM.

We will now consider whether a coroner's inquest is an action *in personam* or an action *in rem*. A coroner's inquest *super visum corporis* is a proceeding on behalf of the people to determine how and by what means the person before whom the coroner's jury was impannelled, came to his death. If then, a judgment *in rem* (12 A. and E. Ency. p. 62), is: "A judgment against some person or thing upon the status of the person or the nature and condition of the thing, and is equally

binding on all persons," will not an inquest by a coroner come within this definition? The more technical definition of a coroner's inquisitions, to wit: "A proceeding instituted on behalf of the public for or against no one in particular, but against or upon the thing or subject, whose state or condition is to be determined," agrees with the definition of an action *in rem* as defined by the Supreme Court of Vermont (20 Vermont Reports, 65), where the distinction between actions *in personam* and *in rem* is fully discussed. "A judgment *in rem* I understand to be an adjudication pronounced upon the status of some particular subject matter, by a tribunal having competent authority for that purpose. It differs from a judgment *in personam* in this, that the latter judgment is, in form as well as substance, between the parties claiming the right; and that it is so *inter partes* appears by the record itself. It is binding only upon the parties appearing to be such by the record, and those claiming by them. A judgment *in rem* is founded on a proceeding instituted not against the person as such, but against or upon the subject matter itself, whose state or condition is to be determined. It is to determine the state or condition of the thing itself; and the judgment is a solemn declaration upon the status of the thing, and *ipso facto* renders what it declares it to be, etc., no process issues against any one, but all persons interested in determining the state or condition of the instrument are constructively notified:" 20 Vermont Reports, 65.

"Such inquests are of a public nature, and taken under competent authority, to ascertain a matter of public interest, are upon principles already announced admissible in evidence against the world. They are analagous to adjudications *in rem*, being made on behalf of the public; no one is properly a stranger to them; and all who can be affected by them have the power of contesting them:" 1 Starkie on Ev., 307-8, 7 Am. Ed.

That a coroner's inquest is in the nature of a proceeding *in rem* is admitted by Starkie: 2 Starkie on Ev., 384-5, 7 Am. Ed.

Saunders' Pleadings and Practice, page 219, admits that a coroner's inquest is in the nature of a proceeding *in rem*.

In *Rex v. Killinghall*, Chief Justice MANSFIELD informs us that "an inquest of the coroner is likened to *other* inquests of office:" 1 Burrows' Reports, 17.

The author of the celebrated Commentaries, Sir Wm. Blackstone, held, in the case of *Scott v. Shearman*, that "the reason given in some books why this inquest (*fugam fecit*) is not traversable like *other* inquests of office, is because of the notoriety of the coroner's inquest *super visum corporis*, at which the inhabitants of all the neighboring villages are bound to be present:" 2 Wm. Blackstone, Rep. 981.

All the writers on evidence admit that an inquest of a coroner *super visum corporis* "is, in the language of MANSFIELD, likened to *other* inquests of office," and it is admitted that an inquest of office is a proceeding *in rem*. Such being the case the Supreme Court of Tennessee has by analogy decided that the testimony taken before a coroner's jury is evidence at a subsequent trial, that the finding of such jury is evidence of all facts found therein. The case of *Pinson and Hawkins v. Ivey*, involved the point whether the testimony taken before commissioners under the Act of 1819 is receivable as evidence in a subsequent trial. The court held that: "Proceedings *in rem* operating upon the property claimed without notice to adverse claimants, are had in prize courts in all civilized countries; the same course is pursued in the English Court of Exchequer in cases of forfeitures for treasons, felonies, or a violation of the revenue laws. Proceedings are had in the nature of proceedings *in rem*, and without notice, in courts admitting wills to probate and granting administration, and the expectancies of heirs and distributees, swept away when the weakness of infancy, or residence in a foreign land should, seemingly, protect them, because of the permanent political consideration, that the rights of property thus situated should be speedily settled by legal ascertainment of them. All of which adjudications are dictated by public policy and necessity, regardless to some extent, of private rights."

"For similar reasons this course is pursued in the collection of revenue, where the daily practice is to render up judgment and dispose of property for taxes without notice to the owner.

Where a proceeding has been had and an adjudication made, in any of the courts above referred to, although *in rem* or in the nature of a proceeding *in rem* and without notice; still, whenever the judgment is drawn in question in another action affecting the same property or subject matter, the only inquiry that can be made in the second action is, had the court, rendering the first judgment, jurisdiction over the subject matter and did it decide the same? If the first tribunal had jurisdiction and has passed judgment, then such sentence or decree is conclusive and final upon all interested, and *estops* all other courts or tribunals before which is attempted to be litigated the same matter. The facts found by the first tribunal, which were necessary to the formation of the sentence pronounced, are also conclusive of the existence of such facts and can never be the subject of inquiry upon a subsequent investigation in another tribunal, more than the sentence itself."

The same decision says that proceedings before justices of the peace in certain cases and condemnation of commissioners of excise, and that commission instituted by North Carolina to issue military land warrants, and various other tribunals, spiritual and otherwise, are conclusive, because they are proceedings in the nature of a proceeding *in rem*: *Pinson and Hawkins v. Ivey*, 1 Yerger, 349-50.

No one will question that the coroner has exclusive jurisdiction to hold an inquest over the remains—that his inquest is to find out how the person was killed, and by whom—his inquest is held on behalf of the public, and for or against no one.

III. ALL DEPOSITIONS OR TESTIMONY TAKEN BEFORE A CORONER'S INQUISITION, WHETHER REDUCED TO WRITING OR NOT, ARE GOOD EVIDENCE FOR OR AGAINST ANYONE, WHO MAY BE THEREBY AFFECTED.

Upon these grounds the courts have admitted the testimony taken before a coroner's jury, whether reduced to writing or not, as good evidence in any cause of action, and have held that the finding of the jury on a coroner's inquisition throws the burden of proof in a civil case on the party alleging the

contrary. Such depositions, as taken before the coroner's jury, are in the language of the Chief Justice of England, Sir Thomas Jones, "good evidence of murther or anything else." This rule of law is as old as the common law. It does not depend upon statutory enactments for its origin. Testimony taken before a jury impanelled by the coroner has been received as evidence. "Whether the party to be effected was present or not, or had never heard of the proceeding until such testimony is produced in court," by every Chief Justice of England from the time of Edward III. down to and including the reign of Victoria. To show how well settled this rule of law is, we will not confine ourselves to one or more decisions from the courts of England, but will cite decisions and *dicta* from each and every one of the decisions of the Chief Justices and Chancellors of England from the time of Lord HALE down to and including the present Chief Justice. We will also cite decisions and *dicta* from the courts of this country, from New York, Vermont, Georgia, Arkansas, Alabama, Louisiana and from North Carolina. Such evidence is receivable in every one of the United States, unless this law has been repealed. Of course, in most of the States in criminal cases it has been repealed so far that the *prisoner* "must be met face to face by his accusers."

The first decision we cite on the subject of the coroner's inquisition was rendered in the reign of Edward III. This was the Barclai case, in which the court held: "A creditor of one Page, who was found *felo de se* by the coroner's inquisition, traversed the finding, and the jury found that he was not a *felo de se*: Barclai Case, East 45.

"If a man be drowned in a pit, the pit cannot be forfeited, the coroner may charge the township to stop the pit, and make entry thereof in his rolls; and, if it be not done before the next gaol delivery, the township shall be amerced:" 8 E. Carone, 416.

Inquests and the testimony of witnesses before a coroner's jury were used as evidence in Keilway's Report, page 97 and Aley's Report, 51. These early decisions are quoted to show that all the writers on evidence had not examined this

rule of law when they stated that the reception of depositions and testimony taken before a coroner's inquest was under the Statutes of 1 and 2, 2 and 3 Phillip and Mary. The instances are innumerable where such testimony was received in the reigns of Elizabeth, James I., Charles I. and Cromwell. One has only to have a "smattering" knowledge of English history to discover that such evidence was more frequently used than the testimony of witnesses, who met the accused face to face. The first case we will cite after the restoration is the case of Lord Morley before the House of Peers. History states that Lord Morley *was not present*, when the coroner held his inquest over the body of the victim. The House of Lords, upon finding certain facts, summoned "the Judges of all England, consisting of the Chief Justice, Sir John Keylinge, Justices Bridgeman, Atkin, Twisden, Tyrell, Turner, Browne, Wyndham, Archer, Raynsford, Morton and Sir Matthew Hale, to attend a trial before the House of Peers. They met and, upon the facts presented, *inter alia*, resolved *una voce* :

"That in the case any of the witnesses who were examined were dead or unable to travel, and oath made thereof, that then the examination of such witnesses so dead or unable to travel might be read, the coroner first making oath that such examinations are the same, which he took upon oath without alteration : " 7 State Trials, 421.

This is a solemn finding of all the judges of England upon facts presented by the highest court of England—the Court of Peers. This finding has been followed in every case where the question arose as to the admission of testimony taken before a coroner holding an inquest *super visum corporis*.

"A deposition taken before a coroner should be used in evidence, if witnesses were dead or beyond the sea, but not if taken before a justice of the peace. For it is said that the authority of a coroner *super visum corporis* is very great, and in some cases cannot be traversed : " Chief Justice, Sir Thomas Jones, Rep. 53.

"A deposition taken before a coroner can be received as evidence : " Chief Justice, Sir John Kelynge, Rep. 55.

During the twelfth and thirteenth year of the reign of Charles II., that king by patent granted all escheats to their former owners. This action was a *scire facias*, by the administration of *Tomes v. Etherington*. Defendant pleaded in bar the finding of the coroner's inquest over *Tomes* (*Tomes* having committed suicide), the court sustained the plea to be a proper plea and held, "An inquest is conclusive against all parties, and is admissible as evidence:" 1 *Saunders's Rep.* 361.

"White, the Coroner of Westminster, offered the examination of witnesses, who were sworn to be dead, and that they were the same taken before him, viz, one Woodward and Hancock, which *per curiam* is good evidence of murder or any other crime:" 2 *Keble*, 19.

"The coroner must admit evidence on both sides of the question, and if not admitted, the inquest will be quashed. Depositions before a coroner are admitted as evidence, the witness being dead:" 1 *Levinz*, 180.

In the case of *Rex et Regina v. Harrison*, Mr. Darnell, the Attorney-General of England, under William and Mary, said: "My Lord, I desire that Andrew Boswell's examination before Mr. John Browne, the Coroner of London, upon oath may be read," which being proved by the coroner, the deposition was directed to be read: 12 *State Trials*, 825.

"Attorney for defendant objected to the reading of an inquisition of lunacy. The inquisition was admitted as *prima facie* proof of such finding:" 2 *Atkyns*, 412.

In *Leighton v. Leighton*, an inquisition *post mortem* was introduced in evidence where the inquest had found one had been seized of a fee in the twenty-fifth year of Henry VIII. The inquisition was admitted, though objected to, and was competent evidence: *Strange's Rep.* 308.

Inquest of a coroner finding the deceased a lunatic, was offered in evidence against the plaintiff, who claimed as executrix under the will of the suicide, for the purpose of showing that the deceased was incompetent to make a will; evidence was objected to on the part of the executrix. Chief Justice Parker was of opinion that the evidence should be admitted: *Strange's Rep.* 68.

"Inquisitions *post mortem* is good evidence of any deed it may find, *in heac verba*:" 2 Atkyns, 412.

"Inquisitions *post mortem* are evidence of the facts contained in them, and if the originals are lost, the recitals of them in a proceeding on a petition of right in the *coram rege* will be admitted:" 2 Lord Raymond, 1292.

In the case of *Rex v. Eriswell*, about the settlement of a pauper under 12 and 13 Charles II., evidence was admitted to prove what was said on an examination of the pauper by the two committing justices of the peace, in the absence of the inhabitants or representative of the Parish Iriswell. *Held*, under 1 and 2, and 2 and 3, Phillip and Mary, and 12 and 13 Charles II., that this evidence was admissible, even if taken before a justice of the peace, if the case is for the settlement of a pauper. These acts were fully discussed by the four judges. Justice Buller says, "This kind of evidence was very similar to that of a deposition of a coroner, which has been admitted to be good evidence. Though the person accused be not present when it is taken, nor ever heard of it till the moment it is produced against him. The coroner is to inquire into the cause and circumstances of the death of the deceased. Both inquiries are general, and no particular persons are parties to them:" (1 Levinz, 180, Kelynge, 55).

Chief Justice Kenyon in the dissenting opinion said:

"That evidence should be given under sanction of an oath, legally administered in judicial proceeding depending between the parties effecting by it, or those who stand in privity of estate or interest. And as to a judgment being binding, though the party to be effected was not present; I think it will scarcely be found that it is so, unless in cases where the party has had an opportunity of being present or was contumacious, neither of which was the case with the parish now to be effected. The exceptions are founded on the statutes of W. & M. Besides, the examination before a coroner is an inquisition of office; it is a transaction of notoriety to which every person has a right of access:" 3 Term. Rep. 707-12-21.

Starkie refers to the case of *King v. Paine* to uphold his proposition that such testimony, as taken before a coroner's

inquest in the absence of the party accused, is not admissible as evidence.

The counsel made the exception that depositions taken before a mayor could not be used against the prisoner, but admitted that if the testimony had been before a justice of the peace in the prisoner's presence, or before a coroner holding an inquest *super visum corporis*, the evidence offered would be admissible.

In the language of the counsel for defendant this case was not like an information before a coroner or an examination before justices of the peace." The court upheld the view of counsel for defendant: 5 Modern Rep. 163.

An inquisition of lunacy is *prima facie* evidence of lunacy: *Failder v. Silk*, 3 Campbell, 126.

In the case of *Still v. Browne*, it was decided that :

"Depositions of witnesses taken before the coroner on an inquisition touching the death of a person killed by the collision is receivable in evidence in an action for damages; if the witness is beyond the sea : " 9 Carrington & Payne, 245.

In the case of *Prince of Wales Association v. Palmer*, one Palmer had been insured for £13,000 for the benefit of his brother. The insured was an inebriate, and after being insured was murdered by the brother, for whose benefit the policy had been taken out. Before this bill was filed, Palmer, for whose benefit the policy was taken out, murdered some one else, and had been convicted for the second murder and hanged. Bill was filed in the Chancery Court of England by the insurance company to compel the heir to surrender the policy held by him. Inquest was read to prove fraud. The finding of the coroner's inquest was the only evidence produced by the insurance company, a decree was entered compelling the holder to surrender the policy, the court holding : " The finding of a jury on a coroner's inquisition throws the burden of proof, in a civil case, on the party alleging the contrary : " 25 Beavan's Rep. 605.

In *Rex v. Gregory*, the court held that an inquisition before a coroner is receivable to prove the name of the deceased. " The testimony should be reduced in writing, and when

thus taken officially on an inquest, it is, under the circumstances, evidence against the party there or thereafter accused : " 10 Jurist, 387; Phillip on Ev., 10 London Ed. 371.

" There is a class of cases where depositions taken out of court and without the consent of the defendant may be used in evidence against him. " The court goes on to state that the admission is under the statute of Phillip and Mary. That statute does not provide that the testimony shall be admitted, but the depositions are admitted on the ground that they have been taken in the course of a judicial proceeding expressly authorized by law : " People v. Restell, 2 Hill (N. Y.), 289-297..

In *State v. Hooker* and *State v. Davis*, the court held :

" What a deceased witness swore to at the preliminary hearing before the committing magistrate is evidence at the trial in chief. Statutes of Phillip and Mary, unless repealed, are in force in this country." The committing magistrate was a coroner. One of the accused was present at the time. Both were convicted : 17 Vermont, 658.

The court, after citing with approval the case of Lord Morley, said :

" The testimony given at a coroner's inquest is admissible as evidence at the trial in chief." The witness who had testified at the inquest of the coroner was in Alabama. The prosecuting attorney had made no effort to obtain witness, and did not swear that the witness could not be obtained or was dead, consequently the testimony when offered was rejected on these grounds alone : *Williams v. State of Georgia*, 19 Ga. 402.

" Coroner's inquests and testimony taken before a coroner's jury are receivable as evidence if properly signed in Louisiana : " *State of Louisiana v. Evans*, 27 La. Ann. Rep. 297.

Testimony taken before a coroner's inquest is evidence in Arkansas (so changed by statute that the testimony must be taken in the presence of the accused) : 2 Ark. Rep. 237-240-49.

Davis v. State of Alabama brought up the question of the interpretation of the statutes of Phillip and Mary, for under these the testimony was admitted. The error assigned in this

case by the counsel for the accused, Davis, was the admission of the testimony taken before the committing magistrate, which testimony had not been reduced to writing as the statute directs. The court, after citing *State v. Hooker*, 17 Vermont, 658; 3 Washington C.C. 244 and 2 Yerger, 58, with approval, said: "These authorities, I think, sufficient to show that the rule is the same in regard to the admission of such testimony, whether it be in a civil or a criminal case. It is true the statute requires that the testimony of the witnesses shall be reduced in writing by the committing magistrate, but it does not, in express words, make such testimony evidence, if the witness should die, but we all know that testimony thus reduced to writing is legitimate proof after the death of the witness. How, I ask, does it become evidence? Not by force of statute, for that does not make it evidence. It must, therefore, become competent proof upon the general rules of evidence; that is, the witness was duly sworn by competent authority and an opportunity of cross-examination afforded. It is these tests that render the testimony of the deceased witness competent proof, and not that it was reduced to writing. If, therefore, the committing magistrate shall fail or neglect to do his duty in reducing the evidence taken before him to writing, this will not take from the testimony of the deceased witness either of the tests requisite for its admissibility as proof. Nor was it the design of the act to *alter the rules of evidence* in reference to such testimony. It was only intended to preserve the evidence, but not to *alter the law in regard to its admissibility*. True, if the magistrate had not omitted to do his duty, and had taken down in writing the testimony of the deceased witness, this examination would have been the best evidence of what the witness swore, but as he failed to do it, this omission does not destroy the evidence of the deceased witness as competent proof, if it can be recollected and accurately stated upon another trial:" *Davis v. State of Ala.*, 357.

In *People v. White*, the court held, "Testimony of witnesses before a coroner's jury may be received as evidence:" 22 Wendell (N. Y.), 17.

"The depositions taken before trustees for relief against

absent debtors, on the same principle as coroner's inquisition, even though *ex parte* is admissible as evidence:" 7 Johnson (N. Y.); 373.

Jackson *ex dem* Potter and Calvin *v.* Bailey, was an action of ejectment for the recovery of land in the township of Marcellus, in Onondago County. The land was granted to Ephraim Blowers. The lessors of the plaintiff claimed under a deed by Blowers to Van Rensselaers. Defendant contended that Blowers was an infant when the deed was executed. To prove this he called one Matthews, one of the commissioners appointed under the Acts of the Legislature entitled: "An Act to settle disputes concerning title to land in the County of Onondago." To testify what Charles and Jane Blowers, uncle and aunt to Ephraim Blowers, and who were dead, had sworn to before the commissioners at the time the title to the lot was litigated before them by the parties to this cause. The court held that such testimony was admissible as evidence, and said: "But even the want of an opportunity for cross-examination, has not been deemed sufficient to exclude this kind of evidence. For it has been ruled, that if witnesses who were examined on coroner's inquest be dead, or beyond the sea, their deposition may be read; for the coroner is an officer on behalf of the public to make inquiry about the matter within his jurisdiction; and therefore the law will presume the depositions before him to be fairly and impartially taken:" 2 Johnson, (N. Y.) 117-20.

"The testimony of a person examined as a witness before a coroner's jury, such person not being at the time under arrest or charged with crime, may be given in evidence against him on his subsequent trial for the alleged murder of the deceased:" 2 Am. Law Reg. O. S. 1 Parker, 406 or 595.

"The Statutes of 4 Edward I., regulating the power and duties of coroners is in force in Pennsylvania:" 1 W. N. C. 372.

In *State v. Broughton*, the court held their revised Statutes C. 35 on Coroner is taken from the Statutes of Phillip and Mary: 3 Iredell (N. C.), 96, 101.

"In speaking of the duty and authority of the coroner,

Buller affirms: "It is a general rule that depositions taken in a court not of record shall not be allowed in evidence elsewhere; yet if the witnesses on a coroner's inquest be dead, or beyond the sea, their depositions may be read; for the coroner is an officer appointed on behalf of the public to make inquiry about the matters within his jurisdiction; and therefore the law will presume the depositions before him to be fairly and impartially taken, and by the Statutes of Phillip and Mary this power was given to the justices of the peace:" Buller's *Nisi Prius*, 242.

"Judgment, decree or verdict, is allowed to operate as evidence against strangers to the original suit, when the proceeding is, as it is technically called *in rem*:" 1 Starkie on Ev. 227-8.

"Inquests of office, depositions and evidence of a judicial proceeding. Such inquests as are of a public nature and taken under competent authority to ascertain a matter of public interest, are under principles already announced, admissible in evidence against the world. They are analogous to an adjudication *in rem*, being made on behalf of the public; no one is properly a stranger to them; and any one who can be effected by them have the power of contesting them:" 7 Am. Ed., 1 Starkie on Ev. 307-8.

Phillip on Evidence says, "There are, however, authorities which hold that depositions taken at an inquest before a coroner, and even if taken in the absence of the accused, may be admitted on the ground that the coroner is a public officer: John Kelynge's Rep. 55, Sir Thomas Jones' Rep. 53; 1 Levinz, 180, and 12 Howard St. Rep. 852, etc. It is *unquestionably regular* for the coroner to take depositions in the *absence* of the party who may be afterwards charged with the murder on the inquest as *regular*, as it is for a justice to *take depositions* in the presence of the prisoner:" 2 Phillip on Ev., 10th Am. Ed. 239-40, 224; 3 Phillip on Ev. 318 Note.

In *Rex v. Smith*, the court decided that depositions taken in the presence of the prisoner were "regular." The counsel for Smith contended that the Statutes of Phillip and Mary were not followed, as all the testimony was not taken in the presence

of the accused. The testimony was read over to the accused by the justice of the peace. The testimony was admitted as evidence: 2 Starkie Rep. 208.

"The testimony taken before a coroner's inquest is admissible as evidence:" Peake on Ev. 61.

"Depositions of witnesses taken before the coroner on an inquiry touching the death of a person killed by the collision is receivable in evidence in an action for damages, 'if the witness be beyond the sea:'" Greenleaf on Ev. 553, Note.

By the 1 and 2 Phillip and Mary, C. 13, § 15, the coroner is required to take the depositions of witnesses on an inquisition of death and certify it, together with the proceedings, to the Judge at the Assizes. Under this provision the coroner ought to take evidence in favor of the party accused, as well as against him, for the inquiry is not so much like the definition of a grand jury or a bill of indictment, as an inquest of office to ascertain how the deceased came to receive those injuries which proved mortal. The examination thus taken will be sufficient evidence in case the witnesses are dead, unable to travel, beyond the sea, or kept out of the way by the contrivance of the party to whom their testimony is adverse. And it seems they differ from those taken before justices in this respect, that they are admissible, though taken in the absence of the prisoner; because the coroner is an officer on behalf of the public, and will be presumed to have acted properly in all matters within his jurisdiction: 1 Chitty's Criminal Law, 587.

This position that a coroner's inquest is in the nature of a proceeding *in rem* is upheld by Saunders' Pleadings and Practice, 219.

"The testimony and depositions of witnesses taken before a coroner or before the committing magistrate is evidence at the trial in chief:" 1 Wharton on Ev., § 177, 642-7, 812, 2d Ed.

"In this respect there is a striking difference between depositions before a magistrate and before a coroner; for not only *has it been settled*, that if any witnesses who have been examined before the coroner are dead or unable to travel, or kept out of the way by the means and contrivance of the prisoner, their depositions, may be read on the trial of the

prisoner, but the prevailing opinion seems to be that they are equally admissible, *through the prisoner may have been absent at the time of taking the inquisition*. The reasons given for this distinction usually are that the examination before the coroner is a transaction of notoriety to which every one has right of access; and that the coroner is an officer appointed on behalf of the public to make inquiry about the matter within his jurisdiction; and, therefore, the law will presume the depositions taken before him to be duly and impartially taken:" 2 Russell on Crimes, 892.

Taylor (Evidence, § 499) admits that these depositions have been and are used in the subsequent trial.

We will next consider whether these depositions should be reduced to writing to make them evidence. The word deposition as used in the old reports, and the word testimony are synonymous. Peters' Digest of the Common Law gives this definition of a deposition: "In legal language a deposition is evidence given by a witness under interrogatories *oral* or written, and usually written down by an official person."

Depositions of a former witness before a coroner's inquest can be proven by a coroner or clerk, according to Lord Hale, or *now* by any person present at the taking who heard the testimony of deceased witness:" 1 Phillip on Ev. 415, 10th Am. Ed.

"As to the person by whom the *viva voce* testimony may be proved, the American cases agree with the English, that this may be done by any one who heard the testimony, the judge, counsel, jury or bystander, provided he will, on oath, undertake to repeat it in such detail as the practice of the courts may require:" Phillip on Ev., citing authorities.

When this country was settled, preliminary examinations before magistrates and coroners were, in England, regulated by two statutes which were received as common law in Pennsylvania, in Maryland, and probably in the other states generally. They are 1 and 2 P. & M. C. 13, §§ 4 and 5, and 2 and 3 P. & M. C. 10; 1 Bishop on Criminal Procedure, 1198.

IV. SOME PRACTICAL APPLICATIONS.

We will now inquire whether the reason that justified the revival of this old Anglo-Saxon law under Edward I., by the enactment of the statute *de officio coronatis*, after having slept for two hundred years, would be sufficient to enforce this rule of the old common law. "The reason of the law," as Lord Coke said, "is the light of the law." In reading of the early Plantagenet reigns we notice that justice was a mockery, and at times the judges were mistreated. This was caused by the lawlessness of the barons. These ancient highway robbers and sneak thieves would issue from their castles, burning, robbing and committing every crime in the decalogue. To these crimes was always added murder. The coroner of the county would hold an inquest upon the slain. Before this inquest the witnesses would testify. The coroner not obeying the common-law rule—to return the inquest and the testimony to the Court of Eyre on the next circuit—the case being called these criminals would appear and demand justice. The witnesses not appearing and the judges neglecting to enforce this ancient common rule of law concerning testimony taken before a coroner's jury, the accused would be acquitted. Before these barons, however, would demand justice they took "good care" to "interview" the witnesses to know whether they would be present at the trial. After such "interview" the witnesses would be confined in the dungeons of their castles, then with what safety they could demand to meet their accusers face to face!! How horrible the times were can be realized by reading the Chronicles of Henry of Monmouth. In Ivanhoe we read of all these crimes, and when the Castle of Forquillstone was stormed how the witnesses of the crimes of Front De Bœuf almost swarmed from the dungeons. Scott's graphic description of the crimes committed by Front De Bœuf, and how he had escaped punishment clearly demonstrated the necessity of such a law as that enacted by IV, Edward I. The enactment of this law and its rigid enforcement in subsequent reigns demonstrates the necessity for it. We never hear after the enactment of *de officio coronatis*

of witnesses being seized. The barons became stronger than ever—the kings weaker—yet justice did not miscarry by the seizure of witnesses by the barons for the next two hundred and ten years. Before the enactment of this statute the wisest and strongest kings of England had been unable to enforce the law, and after its enactment the weakest king could preserve better order than the strongest had before. This statute prevented the miscarriage of justice, and it was a protection to the witnesses ; for the accused would prefer to meet the witnesses face to face to being tried on the depositions of witnesses whom they had no opportunity to cross-examine. Witnesses, who were compelled to testify, were under a greater protection than any statute could secure ; the defendant as well as the State were solicitous by their welfare. Does any reason exist now for the enforcement of this law ? Are the circumstances such that its enforcement is necessary ? Are there any barons of modern times, who can kill, and for the lack of witnesses appearing against them at the trial, go free ? We think that there is reason and necessity for the enforcement of this law. Instead of barons of flesh, who had souls and were slightly amenable to the good influences of the priests of Christ, we have hundred and thousands of corporations, declared by the law to be souless—to make money is their sole object, and human labor is but a chattel to be bought and sold as it increases or decreases in value. The laborer is served with notice to appear before a coroner's inquest. He must, under penalty, give all the facts known by him to the jury, and if he dares to testify to facts prejudicial to the interest of the corporation before a coroner's jury, he is at once told to draw his pay and leave. This law not now being enforced a premium is given for perjury. The witness must testify in the interest of his employers, or he is deprived of the chance to earn his bread. Often are the interests of others involved. Nothing is so merciless as money when money is endangered. More merciless than the barons of old, they involve in their vengeance, not only the poor witness, but his family ; he sees their bread taken from them, sees them starve, because he has been made to testify that through

their negligence *an animal* has been killed. He and his must suffer, because he has been compelled by the law to testify to facts detrimental to the corporation, and for fear it would suffer the loss of a few paltry dollars. Placed upon a railroad's black list a man can suffer and starve until he is as gruesome as the figure that impersonates famine before he can, under his right name, obtain work at his occupation.

"There is no wrong without its remedy," and, yet cases frequently arise illustrating clearly the necessity for the enforcement of this rule of law making all facts by a coroner's jury *prima facie* evidence of all facts found, and receiving all testimony taken before them as good evidence for or against any one, who may be thereby affected, for without this rule of law, wrongs are committed by the thousands without any adequate remedy in the law.

For example :

A switchman, whilst switching in a railroad yard was run over by an engine and killed, leaving an aged and infirm father. At the inquest held over his remains his "mate" testified that the engine used was an old road engine which had a defective footboard, and that the engine was backing at the time of the accident; that upon throwing the switch, the switchman jumped upon the footboard of the engine and grabbed the brake with his hands; the footboard becoming detached from the engine, he held on with his hands at least a minute before falling; that the witness gave the usual signals and hallooed but the engineer and fireman did not heed them. Had the engineer and fireman been paying attention, and had they heeded his calls and signals the engine could have been stopped before the switchman fell; the engineer was looking in the opposite direction to that in which the engine was going, and the fireman was flirting with some girls on the opposite side of the street.

This testimony was corroborated by other witnesses. Upon these facts the coroner's jury returned a verdict censuring the railroad for gross carelessness and binding the engineer and fireman over to the criminal court. The father of the deceased sued the railroad company for damages. Before the verdict of

the coroner's jury was rendered the witnesses were discharged by the railroad. The principal witness (the "mate" of deceased) not being able to secure employment at the place of the accident was traced from place to place in search of work. until all trace of him was lost. Thus a double wrong had been committed and suffering inflicted on both the living and the dead. An employee of the road while acting in the discharge of his duty, guiltless of any carelessness, was without warning, and without fault subjected to a death horrible in the extreme,—an occurrence so frequent on the great railroads of this country that it is considered hardly sufficient to merit a passing comment in the columns of the press. Had the censurable conduct of the railroad stopped here, it would have been passed without comment or rebuke, the courts of the country being now as in the days of King Edward relied on in confidence to deny justice to no man. But an insult to the court is added to the injury of the dead man, and the only witnesses who could prove the facts which would compel a pecuniary compensation for the wrongful act were discharged by the wrong doer and compelled by want of work to seek employment in distant States, where they too perhaps fell victims to the carelessness of a railroad, and where probably again the witnesses to the tragedy were in like manner compelled to go to distant States. Such may be the case of every man who testifies to facts prejudicial to the interest of a railroad. If such testimony is not admissible in a subsequent suit, why should a railroad employee be compelled to place himself in this position? If a coroner's inquest is a "mere form" is it not unjust to compel one who must toil for his daily bread to lose all chances of employment. If the position taken in this article is the law would it not compel the railroads to be as solicitous for the witnesses' appearance at the trial as the accused were when the law was enforced. Would they not desire to meet the witnesses "face to face?" Would it not secure to their employees safety and employment, and make laborers less liable to shirk their duty to their fellow-men? It would make every corporation wish to meet the witnesses face to face in a court of justice, to have the privilege of cross-examination

and to have a jury pass upon the credibility of such witnesses.

Wonderful it would be, if during a period of six hundred years, embracing all the reports of the common law, we could not find a few opinions to the contrary. In a late case in Illinois depositions taken by a coroner were excluded. Although admitting that depositions could be used under the English Statutes (Phillip and Mary), yet there being "*no implication for its use*" in their statute this testimony was excluded. As the statutes of *de officio coronatis* and Phillip and Mary have not been repealed and in no manner whatsoever conflict with their statute on coroner, (Revised Statutes of Illinois, 1885, Hurd), to arrive at its decision, the court must have repealed the above-mentioned statutes *by implication*. Section 14, page 294 of Revised Statutes of Illinois, directs the jury in almost the identical words of the early English statutes to find out all the facts concerning how the deceased came to receive those injuries which proved mortal: "It shall be the duty of the jurors, as aforesaid, to inquire how, in what manner and by whom or what the said body came to its death, and of *all other facts of and concerning* the same, together with *all* material circumstances in any wise related to or connected with said death and make up and sign a verdict, and deliver the same to the coroner." A recital of the opinion will, with all due respect to the court so deciding, show its fallacy.

"The provision of our statute simply is, "which testimony (before coroners) shall be filed with said coroner in his office and carefully preserved, there being *no implication*, as in the English statute, that the inquisition is for use in court. The cases, in which such depositions have been received, are mostly criminal cases, but they have been received in a civil case (*Sill v. Brown*, 9 C. & P. 601). The plaintiff was not a party to the proceedings before the coroner, was not present, had no opportunity for the cross-examination of the witness and any question of negligence—the vital question here—was not the very matter of inquiry before the coroner. The legitimate object of the inquest would have been fulfilled in finding simply that death was caused by his being run over by a railroad train, without inquiring whether it was through any

one's or whose negligence. We are of opinion was rightly excluded."

Pittsburgh, Cincinnati & St. Louis Railway Company *v.* James McGrath Adams, 115 Illinois Rep. 175-6.

The next opinion cited is simply judicial legislation overriding former decisions of the New York Court, and in terms repealing the statute of Phillip and Mary, without ever giving a reason for so doing. Our inference from the language of the court is that, had they ever heard of an *inquisition* they did not fully comprehend its nature and effect. In *M. Cook* as administrator of John Cook, deceased, *v.* The New York Central Railroad Company, the court held, "The testimony of the witness, John Brennan, before the coroner's inquest, was properly excluded, the inquest was no action or judicial proceeding between the parties in any sense." 5 Lansing (N. Y.), 406.

In *State v. Campbell*, 2 Richardson, 124, the court held that depositions before a coroner were not admissible on the ground that—"they are *ex-parte*"—"there was no cross-examination by the prisoner's counsel;" cannot see a word in either act, to justify any alteration in the *established* rule of *evidence*;" "that it cannot escape observation that, at most, their resolves were no more than respectable *obiter dicta*, and made before the meeting of the Peers who tried Lord Morley:" 1 Richardson (S. C.), 124.

In conclusion we will cite the dissenting opinion of Justice O'Neill in the last-mentioned case: "Instead of being questioned, until Russell, Starkie and Roscoe wrote, no one dreamed of doubting them. That great and good man, Sir Matthew Hale, in his Pleas of the Crown, 2nd Vol., 284, recognizes the rule in its broadest terms." Judge Buller, in his trials at Nisi Prius, 292, says: "If the witnesses examined on a coroner's inquest be dead or beyond the sea, their depositions may be read; for the coroner is an officer appointed on behalf of the public to make inquiry about the matter within his jurisdiction." In Leach's Crown Cases, 14 Webster's Case will be found, "in which the deposition of an accomplice taken before Lord Chief Justice Lee was allowed to be read

on proof of his death." In the case of *King v. Eriswell*, 3 T. R. 763, it is stated by BULLER, J., that the examination of a pauper, under 13 and 14 Cor. II., was very similar to the case of depositions before a coroner, which has long been settled to be good evidence, *though the person accused be not present when it is taken nor never heard of it* till the moment it is produced against him. Lord Kenyon, who differed from Buller on the point before them, admitted the rule in criminal cases as to depositions before the coroner. For he said: "These exceptions alluded to, meaning depositions taken before magistrates and coroners are founded on the statutes of Phillip and Mary, and that they go no further, is abundantly proved. Besides, the examination before the coroner is an *inquest of office*, it is a transaction of notoriety to which *every person has access*. After such an array of authorities I confess I should as little think of questioning the rule, as I would the first rule of evidence. It is true, Judge Johnson did express a doubt about the admissibility of such evidence, but the point was not before him, and he merely acquiesced in the reasonableness of Starkie's doubt. I attach no consequence to the presence of the prisoner or on his right of cross-examination. Neither of them are of any intrinsic consequence to truth; and then when it is remembered that this is an inquest of office, and that the testimony is only resorted to where God has put out of the power of the State or the accused to have the benefit of a first examination of the witnesses, there can be no reason to complain of its admissibility: " 2 Richardson, S. C., 134-5.